

# **EXHIBIT 3**

**Condensed Transcript**

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

IAN J. BROWN, JAMES BROWN AND  
BARBARA BROWN,

Plaintiffs,

VS

CIVIL ACTION NUMBER  
04-11924-RGS

UNITED STATES OF AMERICA,  
VERIZON NEW ENGLAND, INC.,  
AND BOSTON EDISON COMPANY  
D/B/A NSTAR ELECTRIC,

Defendants.

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**DEPOSITION OF**

**MURRAY BURNSTINE, P.E.**

February 20, 2007  
10:50 a.m.

Prince, Lobel, Glovsky & Tye, LLP  
100 Cambridge Street  
Boston, Massachusetts

Laurie J. Driggers, Certified Court Reporter, Registered Professional Reporter,  
Certified Realtime Reporter, Certified LiveNote Reporter and Notary Public  
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Murray Burnstine, P.E.

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<p style="text-align: center;">113</p> <p>1 control. You can take your hand off and 2 it'll keep going. 3 Q. Do you know if that was added to 4 this bike? 5 A. When I inspected it, it -- it 6 returned to idle by itself when you let go 7 of it. 8 Q. So your opinion is that after 9 losing directional control in the area of 10 the manhole cover, the motorcycle then 11 proceeded towards the guardrail on the 12 right side of the road? 13 A. Correct. 14 Q. And is it your opinion that Brown 15 was astride the motorcycle as it proceeded 16 towards the right side of the road? 17 A. Yes. 18 Q. Okay. And you then indicated that 19 his right hip and right shoulder made 20 contact with the guardrail? 21 A. Correct. 22 Q. And is it your opinion that this 23 occurred before Brown reached the area of 24 the utility pole?</p>	<p style="text-align: center;">115</p> <p>1 Q. Okay. 2 A. -- about even with his hip. 3 Q. And when you say "leaning forward," 4 would he be leaning so his chest was on 5 the top of the gas tank or slightly off 6 to the side of the motorcycle, to the 7 right side of the motorcycle? 8 A. I don't know. I can't give you 9 that precision. I just assumed he was 10 just leaning forward. 11 Q. Do you have an opinion as to where 12 along the guardrail Brown made contact? 13 A. You mean where -- 14 Q. I'm sorry. It's a bad question. 15 Is it your opinion that he made 16 contact with the guardrail somewhere 17 between Pole 37 and -- is this 38 or 39 18 -- between Pole 37 and the pole with the 19 25 mile an hour speed limit sign? 20 A. Yes. 21 Q. And do you have an opinion as to 22 where along that stretch he made contact? 23 A. No. I -- probably in the last 13 24 feet, because there was none of his --</p>
<p style="text-align: center;">114</p> <p>1 A. Yes. 2 Q. And by before, I guess that would 3 be west of the utility pole; is that 4 right? 5 MS. JOHNSON: 6 South-southwest. 7 A. It would be south. 8 South-southwest. 9 Q. And when -- is it your opinion that 10 when Brown made contact with the 11 guardrail, he was astride the motorcycle 12 at that time? 13 A. For the hip, he probably -- he 14 might have been, but for the shoulder he 15 had to be horizontal. He had to be 16 preparing to push the motorcycle away to 17 get his shoulder involved. 18 Q. So it's your opinion that he could 19 not have been on the motorcycle when his 20 shoulder made contact with the guardrail? 21 A. He'd be on the motorcycle, but he 22 would be leaning forward so that his 23 shoulder was down -- 24 (Witness indicating)</p>	<p style="text-align: center;">116</p> <p>1 none of his clothing caught in the seams 2 of the guardrail. And I believe that each 3 section is 13 feet long. 4 Q. Do you have an opinion as to how 5 long his body was in contact with the 6 guardrail? 7 A. No. Well, what do you mean "how 8 long?" You mean for the distance or the 9 seconds? 10 Q. No, I'm sorry. It's a fair 11 question. 12 Time, in terms of time. 13 A. I would say it would be less than 14 13 feet. 15 Q. How about time? 16 A. I can't tell. It just says, less 17 than 13 feet. 18 Q. Did you see any evidence in the 19 last 13 feet of the guardrail before Pole 20 16/37 that he was actually in contact with 21 the guardrail? 22 A. No. The evidence is on the 23 clothing. I didn't see anything on the 24 guardrail that -- that indicated anything</p>

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<p style="text-align: center;">117</p> <p>1 to do with this accident.</p> <p>2 Q. When you went to the scene in April</p> <p>3 to perform your survey of the scene, did</p> <p>4 you have photographs from the Bedford</p> <p>5 Police Department at that time?</p> <p>6 A. No.</p> <p>7 Q. Would making contact with the</p> <p>8 guardrail reduce Mr. Brown's speed at</p> <p>9 which he was traveling?</p> <p>10 A. Yeah, of course.</p> <p>11 Q. Okay. Do you have an opinion as</p> <p>12 to how much his speed was reduced by way</p> <p>13 of his contact with the guardrail?</p> <p>14 A. It would be insignificant.</p> <p>15 Q. And why would it be insignificant?</p> <p>16 A. Well, you got a -- a 700-pound</p> <p>17 object. I mean, you -- trying to slow it</p> <p>18 down by the guy's sleeves -- sleeve</p> <p>19 rubbing against a metal guardrail is not</p> <p>20 going to slow you down much. I don't</p> <p>21 think you could measure it if you had, you</p> <p>22 know, instruments.</p> <p>23 Q. So you couldn't calculate?</p> <p>24 A. No. Well, you'd have to know the</p>	<p style="text-align: center;">119</p> <p>1 speed. It just has to do with -- with</p> <p>2 the contact force. You know, if his --</p> <p>3 if the motorcycle is leaning over, then</p> <p>4 you'd have to know the angle and what the</p> <p>5 -- and then can you calculate the force.</p> <p>6 Q. Do you know the formula to</p> <p>7 determine the force -- the contact force</p> <p>8 to which you're referring? Is there a</p> <p>9 formula used in physics?</p> <p>10 A. Well, you have to draw what's</p> <p>11 called, a free body diagram. Take into</p> <p>12 account the weight of the rider, what</p> <p>13 portion of his body is -- is involved, the</p> <p>14 weight of the motorcycle, the angle it's</p> <p>15 at.</p> <p>16 You know, I'd be surprised if you</p> <p>17 -- for a person going 20 miles an hour,</p> <p>18 if it would slow him down even one mile</p> <p>19 an hour.</p> <p>20 Q. And is it your opinion that the</p> <p>21 contact force bears no relationship to the</p> <p>22 speed of travel?</p> <p>23 A. No. They're two different things.</p> <p>24 Q. So the contact force of a person on</p>
<p style="text-align: center;">118</p> <p>1 distance and the coefficient of friction.</p> <p>2 Then you can calculate it. Whether he's</p> <p>3 going uphill or downhill, but, I mean,</p> <p>4 you're going to end up with a, you know,</p> <p>5 a tenth of a mile per hour or something</p> <p>6 like that.</p> <p>7 Q. Is it possible to find out what the</p> <p>8 coefficient of friction is between Mr.</p> <p>9 Brown's riding clothing and the steel</p> <p>10 guardrail?</p> <p>11 A. Yeah, you can run tests.</p> <p>12 Q. Okay. So you could calculate it if</p> <p>13 you needed to?</p> <p>14 A. Well, you'd have to know -- you'd</p> <p>15 have to know the contact force, how many</p> <p>16 pounds were bearing down and exactly what</p> <p>17 part of his uniform was involved. Because</p> <p>18 I think it's different type of material.</p> <p>19 Q. And would contact force be</p> <p>20 determined by the speed, the weight and</p> <p>21 the angle of impact at the guard --</p> <p>22 between Brown, the motorcycle and the</p> <p>23 guardrail?</p> <p>24 A. Well, it doesn't have to do with</p>	<p style="text-align: center;">120</p> <p>1 a motorcycle that hits a guardrail at 80</p> <p>2 miles an hour is the same as one who hits</p> <p>3 at 20 miles an hour?</p> <p>4 A. Yeah. The force would be the same.</p> <p>5 Q. Okay. Now, after striking the</p> <p>6 guardrail, do you have an opinion as to</p> <p>7 the direction of travel of the --</p> <p>8 A. Wait.</p> <p>9 Q. -- of the motorcycle?</p> <p>10 A. Who struck the guardrail? I didn't</p> <p>11 say --</p> <p>12 Q. After making contact with the</p> <p>13 guardrail --</p> <p>14 A. Yes.</p> <p>15 Q. -- do you have an opinion as to</p> <p>16 the direction of travel of the motorcycle?</p> <p>17 MR. CHARNAS: I'm sorry.</p> <p>18 After Mr. Brown struck the guardrail --</p> <p>19 MR. LEWIN: Yes.</p> <p>20 MR. CHARNAS: -- or after</p> <p>21 -- okay.</p> <p>22 A. Well, Brown and the motorcycle were</p> <p>23 traveling parallel to the guardrail. When</p> <p>24 he hit his head on the pole, the</p>

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<p style="text-align: center;">121</p> <p>1 motorcycle continued ahead and down toward</p> <p>2 its left where the police found it 89 feet</p> <p>3 away.</p> <p>4 Q. Now, when you say, Brown and the</p> <p>5 motorcycle were traveling parallel to the</p> <p>6 guardrail, at what point did they begin to</p> <p>7 travel parallel to the guardrail?</p> <p>8 A. Well, according to the police, they</p> <p>9 have located a mark.</p> <p>10 Q. Well, what's your opinion about --</p> <p>11 MR. CHARNAS: Can he just</p> <p>12 finish his answer, please?</p> <p>13 THE WITNESS: What?</p> <p>14 MR. LEWIN: Well, it's a</p> <p>15 non-responsive.</p> <p>16 MR. CHARNAS: Then you have</p> <p>17 the right to strike it later on, but he</p> <p>18 has the right to finish his answer.</p> <p>19 A. Well, I know he was parallel to the</p> <p>20 guardrail, because his clothing was melted</p> <p>21 by contacting the guardrail in two -- two</p> <p>22 areas.</p> <p>23 Q. All right. Well, you've told us</p> <p>24 that after he left -- after he lost</p>	<p style="text-align: center;">123</p> <p>1 guardrail on the police diagram.</p> <p>2 Q. Do you have an opinion, independent</p> <p>3 of what's in the police report, about the</p> <p>4 location where Brown's direction of travel</p> <p>5 changed to being towards the right towards</p> <p>6 the guardrail, and then parallel to the</p> <p>7 guardrail?</p> <p>8 A. No.</p> <p>9 Q. Do you believe that --</p> <p>10 A. It's just that it had to be before</p> <p>11 Pole 37.</p> <p>12 Q. Do you believe that Brown's</p> <p>13 direction of travel was constantly towards</p> <p>14 the right after he lost directional</p> <p>15 control of the motorcycle to the point</p> <p>16 that he made contact with the guardrail?</p> <p>17 A. That I don't know. It could've</p> <p>18 been wobbling all over the road. There's</p> <p>19 no -- you know, without any tire marks in</p> <p>20 the road, I just -- it's just speculation</p> <p>21 what happened next.</p> <p>22 Q. If he was wobbling, would you</p> <p>23 expect there to be tire marks in the road?</p> <p>24 A. Not necessarily.</p>
<p style="text-align: center;">122</p> <p>1 directional control of the motorcycle, that</p> <p>2 he then traveled towards the right towards</p> <p>3 the guardrail. Do you remember that</p> <p>4 testimony?</p> <p>5 A. Yes.</p> <p>6 Q. And while he was traveling towards</p> <p>7 the right towards the guardrail --</p> <p>8 guardrail, was he traveling parallel to</p> <p>9 the guardrail?</p> <p>10 A. That question doesn't make sense.</p> <p>11 He has to go travel to the right to get</p> <p>12 to the guardrail.</p> <p>13 Q. Okay. And then you testified at</p> <p>14 some later point he was traveling parallel</p> <p>15 to the guardrail; is that right?</p> <p>16 A. Yes.</p> <p>17 Q. Now my question to you is, when did</p> <p>18 he -- when did his direction of travel</p> <p>19 change towards being in a direction</p> <p>20 towards the guardrail, to then being</p> <p>21 parallel with the guardrail?</p> <p>22 A. I guess where the police have what</p> <p>23 they call, first skid. They have a mark</p> <p>24 that looks like it's heading for the</p>	<p style="text-align: center;">124</p> <p>1 Q. If he were wobbling on the shoulder</p> <p>2 of the road, would you expect there to be</p> <p>3 marks on the dirt shoulder of the road?</p> <p>4 A. Yes. There would be S-shaped</p> <p>5 marks, showing the motorcycle going back</p> <p>6 and forth.</p> <p>7 Q. And did you see any of those marks</p> <p>8 when you were at the scene?</p> <p>9 A. No.</p> <p>10 Q. Have you ever seen any photographs</p> <p>11 of any such marks?</p> <p>12 A. No.</p> <p>13 Q. Do you have any idea how much force</p> <p>14 it would take to cause the marks that you</p> <p>15 observed on Brown's clothing that you</p> <p>16 believe were caused by the guardrail?</p> <p>17 A. No.</p> <p>18 Q. How -- do you have an opinion as</p> <p>19 to how those marks were caused?</p> <p>20 A. Just the heat of friction --</p> <p>21 Q. Okay.</p> <p>22 A. -- rubbing against an unpainted</p> <p>23 surface. Unpainted, untarred, no sand --</p> <p>24 and it could only be the beam and the</p>



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<p style="text-align: center;">165</p> <p>1 people in my field that the safest 2 location for a pole, if you got to have 3 them, is on the inside of a curve. 4 Q. Understanding that it would be 5 safer to have the pole, in your opinion, 6 on the inside of the curve, what is the 7 basis of your opinion that the pole was 8 located on the wrong side of the road? 9 A. Because it's on the outside of the 10 curve. 11 Q. So is it your opinion that all 12 utility poles must be located on the 13 inside of a curve? 14 A. No. They can be on the outside of 15 the curve if they're 20 feet from the 16 road, you know, where nobody's going to 17 hit them. But this thing's on the wrong 18 side of the road and it's nine inches from 19 the edge of the road. 20 Q. Well, when you -- when you -- I 21 think your report says the pole's 13 22 inches from the side of the road. 23 A. It's what? 24 Q. Thirteen inches?</p>	<p style="text-align: center;">167</p> <p>1 A. I don't know either way. 2 Q. What's the speed limit on that 3 curve? 4 A. The sign says, 25. 5 MR. CHARNAS: Off the 6 record. 7 (Off the record) 8 BY MR. LEWIN: 9 Q. Other than your reference to common 10 knowledge, as you've stated it, did you 11 review any other materials indicating or 12 supporting your opinion that the pole was 13 on the wrong side of the road, other than 14 the article entitled "Design 15 Considerations..." that we've been 16 speaking about? 17 A. I don't know either way. 18 Q. My question is, did you review any 19 other materials? 20 A. I don't remember. 21 Q. But you've brought here today all 22 the articles you reviewed in reaching your 23 opinion; isn't that right? 24 A. For this case, correct.</p>
<p style="text-align: center;">166</p> <p>1 A. Oh -- you're correct. 2 Q. When you say, wrong side of the 3 road, are you aware of any literature that 4 states poles cannot be located within 13 5 inches on the outside of a curve? 6 A. Just a rule of common sense. 7 MR. CALLAHAN: Is that a 8 no? 9 A. Pardon? 10 MR. CALLAHAN: Is that a 11 yes or a no? Can we get an answer to the 12 question? 13 A. I don't know of any written 14 standard that tells you 13 inches is no 15 good, but 14 inches is all right. 16 Q. Are you aware of any Massachusetts 17 regulations in that respect? 18 A. No. I'm not -- I don't know 19 either way. 20 Q. In fact, are you aware whether this 21 pole, in terms of its distance from the 22 edge of the pavement, was in violation of 23 any law or regulation in the State of 24 Massachusetts?</p>	<p style="text-align: center;">168</p> <p>1 Q. Are you aware of any publication 2 that states that it is impermissible to 3 locate a utility pole on the outside of a 4 curve of a road which has a speed limit 5 of 25 miles an hour? 6 A. I can't imagine that kind of -- 7 that kind of specification. 8 Q. So is your answer no? 9 A. I'm not aware of any. 10 Q. Did you conduct any other analysis 11 upon which you based your opinion that the 12 pole was on the wrong side of the road, 13 other than reference to common sense -- or 14 common knowledge? I'm sorry. 15 A. No. Well, I talked to a traffic 16 engineer about it. 17 Q. Well, I just asked you a minute ago 18 if you had spoken to any person about the 19 location of the utility pole -- 20 A. Oh, I -- 21 Q. -- and you said, no. 22 A. -- I discussed this case with a 23 friend of mine who's a -- a highway 24 designer.</p>

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<p style="text-align: center;">169</p> <p>1 Q. Who's that?</p> <p>2 A. Murray Segal, S-E-G-A-L.</p> <p>3 Q. And what was your discussion with</p> <p>4 him?</p> <p>5 A. I just explained it, told him about</p> <p>6 the case: pole 13 inches from the end of</p> <p>7 the pavement and on the wrong side of a</p> <p>8 guardrail. And he said it sounded like a</p> <p>9 real defect.</p> <p>10 Q. What sounded like a real defect?</p> <p>11 A. What's that?</p> <p>12 Q. What sounded like a real defect?</p> <p>13 A. The pole location and the guardrail</p> <p>14 orientation.</p> <p>15 Q. So he said that the location of the</p> <p>16 guardrail behind the pole sounded like a</p> <p>17 real defect?</p> <p>18 A. Correct.</p> <p>19 Q. Did he specifically say to you that</p> <p>20 the location of the pole on the outside of</p> <p>21 a curve was a defect?</p> <p>22 A. I don't think he said it was a</p> <p>23 defect. He said it sounds like a</p> <p>24 dangerous scene.</p>	<p style="text-align: center;">171</p> <p>1 this guardrail was to deflect vehicles</p> <p>2 away from the pole?</p> <p>3 A. Well, that should've been its</p> <p>4 purpose.</p> <p>5 Q. What if the guardrail was installed</p> <p>6 to protect the fence, would that change</p> <p>7 your opinion about the purpose of the</p> <p>8 guardrail?</p> <p>9 A. Well, it could -- it should've been</p> <p>10 on the other side of the pole.</p> <p>11 Q. Do you know when the guardrail was</p> <p>12 placed?</p> <p>13 A. I was told that there -- there's no</p> <p>14 record of who installed the guardrail is</p> <p>15 what Mr. Charnas told me.</p> <p>16 Q. Do you know when it was installed?</p> <p>17 A. No.</p> <p>18 Q. Do you know when the pole was</p> <p>19 originally installed?</p> <p>20 A. Yeah. 1916.</p> <p>21 Q. Do you know which was installed</p> <p>22 first?</p> <p>23 A. What?</p> <p>24 Q. Do you know which was installed</p>
<p style="text-align: center;">170</p> <p>1 Q. Did he specifically say to you that</p> <p>2 the pole was improperly located on the</p> <p>3 outside of the curve?</p> <p>4 A. I don't think so. I mean, there's</p> <p>5 just some things, you know, like, one and</p> <p>6 one is two. You don't have to get an</p> <p>7 answer out of somebody.</p> <p>8 Q. Did you tell him the speed limit of</p> <p>9 the road?</p> <p>10 A. I don't remember.</p> <p>11 Q. Did you tell him the radius of the</p> <p>12 curve --</p> <p>13 A. Yes.</p> <p>14 Q. -- on the road?</p> <p>15 A. Yes.</p> <p>16 Q. Now you also opine in your report</p> <p>17 that the guardrail is on the wrong side of</p> <p>18 the pole; is that -- is that your opinion?</p> <p>19 A. Yes.</p> <p>20 Q. What's the basis for that opinion?</p> <p>21 A. The purpose of the guardrail is to</p> <p>22 deflect vehicles away -- away from the</p> <p>23 pole, not into it.</p> <p>24 Q. How do you know that the purpose of</p>	<p style="text-align: center;">172</p> <p>1 first?</p> <p>2 A. Oh, I think the -- the pole would</p> <p>3 be installed first. Because that type of</p> <p>4 guardrail has only been around for 40</p> <p>5 years.</p> <p>6 Q. What materials did you review in</p> <p>7 reaching your opinion that the guardrail</p> <p>8 is on the wrong side of the pole?</p> <p>9 A. Again, one of those papers.</p> <p>10 Q. And just to speed things along, is</p> <p>11 it this paper, "Effects of Presence of</p> <p>12 Light Poles on Vehicle Impact of Roadside</p> <p>13 Barriers?"</p> <p>14 MR. CHARNAS: What page are</p> <p>15 you on, Josh?</p> <p>16 MR. LEWIN: Page 4 of</p> <p>17 his --</p> <p>18 (Witness viewing)</p> <p>19 A. It might have been. I'm not sure.</p> <p>20 It could've been the U.S. Federal Highway</p> <p>21 paper.</p> <p>22 Q. Did you review any other materials,</p> <p>23 other than those listed in this report,</p> <p>24 with respect to your opinion regarding the</p>

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<p style="text-align: center;">173</p> <p>1 relative locations of the guardrail and</p> <p>2 the utility pole?</p> <p>3 A. No.</p> <p>4 Q. And, again, this article, "Effects</p> <p>5 of Presence of Light Poles on Vehicle</p> <p>6 Impact of Roadside Barriers," was that</p> <p>7 something you already had in your files?</p> <p>8 Or did you obtain that to find support for</p> <p>9 your opinion?</p> <p>10 A. I -- I -- I obtained it.</p> <p>11 Q. To support your opinion in this</p> <p>12 case?</p> <p>13 A. I guess so.</p> <p>14 Q. And where did you get it?</p> <p>15 A. Internet search engine.</p> <p>16 Q. And did you read this entire</p> <p>17 article prior to reaching your conclusions,</p> <p>18 or did you read it after you had reached</p> <p>19 your conclusions?</p> <p>20 A. Prior.</p> <p>21 Q. And did you consider its</p> <p>22 methodology and conclusions to be sound?</p> <p>23 A. Yes.</p> <p>24 Q. And how is it that you say this</p>	<p style="text-align: center;">175</p> <p>1 A. No.</p> <p>2 Q. Are you aware of any state laws or</p> <p>3 regulations with respect to the placement</p> <p>4 of guardrails in juxtaposition to a</p> <p>5 utility pole?</p> <p>6 A. I -- I don't know of any written</p> <p>7 regulation, but, again, it's just common</p> <p>8 sense.</p> <p>9 Q. And are you aware of whether that</p> <p>10 matter of common sense is published in any</p> <p>11 peer-reviewed journals or articles?</p> <p>12 A. I believe these articles that I've</p> <p>13 cited say that, what the purpose of the</p> <p>14 guardrail is. It's not to make sure you</p> <p>15 slide into a pole.</p> <p>16 Q. Now you have also provided an</p> <p>17 opinion in your report that Pole 37 was</p> <p>18 too close to the pavement; is that your</p> <p>19 opinion?</p> <p>20 A. Correct.</p> <p>21 Q. On Hartwell Road, what distance</p> <p>22 would not be too close to the pavement?</p> <p>23 A. Well, I just have to say, as far</p> <p>24 as possible.</p>
<p style="text-align: center;">174</p> <p>1 article supports your conclusion that the</p> <p>2 guardrail's on the wrong side of the pole?</p> <p>3 A. I believe the article says the</p> <p>4 purpose of the guardrail is to deflect</p> <p>5 vehicles away from poles or other</p> <p>6 obstacles.</p> <p>7 Q. Do you consider Hartwell Road, in</p> <p>8 the area of the accident, to be a</p> <p>9 low-volume road?</p> <p>10 A. Well, compared to what? It's not</p> <p>11 -- it's not Route 128.</p> <p>12 Q. It's a small, rural road; is that</p> <p>13 right?</p> <p>14 A. Yeah.</p> <p>15 Q. With one lane in each direction?</p> <p>16 A. Yeah, I mean, they have -- when</p> <p>17 they have a traffic jam in the morning</p> <p>18 when that -- people in the trailer park go</p> <p>19 to work. You know, but I wouldn't</p> <p>20 consider it a major road. It is just a</p> <p>21 country road.</p> <p>22 Q. It's not an urban road?</p> <p>23 A. No.</p> <p>24 Q. It's not a highway?</p>	<p style="text-align: center;">176</p> <p>1 Q. Did you consult with anyone</p> <p>2 regarding the proximity of the pole to the</p> <p>3 edge of the pavement in reaching your</p> <p>4 opinion?</p> <p>5 A. I don't recall.</p> <p>6 Q. What materials did you review with</p> <p>7 respect to your opinion that the pole was</p> <p>8 too close to the edge of the roadway?</p> <p>9 A. Just my common sense.</p> <p>10 Q. And again, you didn't review any</p> <p>11 state rules or regulations or laws</p> <p>12 regarding the distance that is required to</p> <p>13 be maintained between the edge of the</p> <p>14 pavement and the utility pole, did you?</p> <p>15 A. Well, during the Harvard Study</p> <p>16 there were -- we found a big oak tree in</p> <p>17 Danvers that had been involved in about</p> <p>18 ten fatal accidents of cars running into</p> <p>19 it. It was -- it was half in the street,</p> <p>20 this tree.</p> <p>21 And we put a recommendation that</p> <p>22 the tree be removed. And we had to go to</p> <p>23 a hearing with the tree warden in front of</p> <p>24 the tree so that the tree could hear what</p>



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Murray Burnstine, P.E.

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<p style="text-align: center;">245</p> <p>1 own if the -- if the front wheel gets 2 knocked out of alignment. So it's not 3 like an automobile at all. 4 If it starts leaning from right to 5 left, that's called a roll. The 6 motorcycle just goes where you don't want 7 it to go. And it's -- it takes a really 8 skilled rider to get it back on. 9 Sometimes you have to speed up, sometimes 10 you have to let go of the handlebars and 11 let the -- and -- and jerk the throttle. 12 But it can take you by surprise, you know. 13 You're suddenly going where you don't want 14 to go. 15 Q. With reference to your report in 16 this case, did you form an opinion as to 17 when Mr. -- at what distance past the 18 manhole cover Mr. Brown lost directional 19 control of the motorcycle? 20 A. No. I don't have a distance, 21 except it was before Pole 37. 22 Q. So sometime between the manhole 23 cover and Pole 37, Mr. Brown lost 24 directional control of the motorcycle; is</p>	<p style="text-align: center;">247</p> <p>1 not that -- your opinion? 2 A. I think it was at the moment of 3 impact. 4 Q. Okay. And at what point in time 5 after the -- after he passed the manhole 6 cover did the motorcycle start to lean to 7 the right? 8 A. That I don't know. 9 Q. Okay. When Mr. Brown and the 10 motorcycle were riding parallel to the 11 guardrail, what position, in your opinion, 12 was the motorcycle in in terms of angle to 13 the street? 14 A. When was that? 15 Q. When Mr. Brown and the motorcycle 16 were riding parallel to the guardrail 17 along the -- the shoulder of the road, 18 what position was the motorcycle in in 19 relation to the angle to the street? 20 MR. CHARNAS: Objection. 21 A. I think it was upright, if that's 22 what you mean -- 23 Q. Okay. 24 A. -- by angle. I don't think it was</p>
<p style="text-align: center;">246</p> <p>1 that -- 2 A. Correct. 3 Q. -- your opinion? 4 A. Yes. 5 Q. And I think you indicated that it 6 was your opinion that the motorcycle 7 started to roll to the right; is that 8 correct? 9 A. No. I said that at the -- at the 10 time of his head hitting the pole, if the 11 motorcycle was rolled to the right, it 12 would explain how his head got hit and not 13 his shoulder or his legs or the 14 motorcycle. Because a motorcycle in that 15 lean-to-the-right position, the operator's 16 head is the farthest object to the right. 17 I can show you with this toy 18 motorcycle. 19 (Witness indicating). 20 If you lean to the right, your 21 head's going to get hit and nothing else. 22 Q. So at some point in time, it is 23 your -- your opinion that Mr. Brown's 24 motorcycle leaned to the right or is it</p>	<p style="text-align: center;">248</p> <p>1 leaning at that point. 2 Q. So it's your -- I'm sorry. I 3 didn't mean to cut you off. 4 A. There's no need for it to lean 5 there. He's just traveling, you know, 6 with the handlebars straight ahead. He's 7 going parallel to the -- to the guardrail. 8 Q. Okay. So it's your opinion that 9 Mr. Brown was astride the motorcycle 10 riding parallel to the guardrail along the 11 dirt shoulder of the road in an upright 12 position on the motorcycle; is that 13 correct? 14 A. Correct. 15 Q. And for how long a distance is it 16 -- is it -- strike that. 17 Did you form an opinion as to what 18 distance Mr. Brown traveled in that 19 position? 20 A. I have some calculations that may 21 refine what I testified to before. It's 22 104 feet 2 inches from the center line of 23 the manhole to Pole 37. That's a hundred 24 or something before. Going at 24 miles an</p>

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